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SPEECH OF SIR HECTOR LANGEVIN, M.P.,

ON

SEPARATE SCHOOLS IN MANITOBA

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TUESDAY, 7th MARCH, 1893.

Sir HECTOR LANGEVIN. Mr. Speaker, I do not intend following the hon. gentleman who has just sat down through the different portions of his argument, though I must say that, in his way of thinking, he has made a very important and a very weighty speech. But I think that, as a representative, perhaps the oldest representative here except one, I should express my views about this question which has been raised by the hon. member for L'Islet (Mr. Tarte). The hon. gentleman (Mr. McCarthy) who has just taken his seat, has stated that we cannot impose separate schools on Prince Edward Island, Nova Scotia or New Brunswick. Well, that is not a new thing, because when the conference took place in London for the Confederation of these provinces, the question arose there whether we should not give all these three provinces the same system of separate schools as we had, and as we still have, in the two provinces of Ontario and Quebec. And we were unanimous in saying that we were not there to make laws for the different provinces, but to take the laws of the different provinces and apply them in the affairs to which they had been applied by their different Legislatures. And, therefore, though the pressure was very great and the reasons given in certain cases very strong, we could not do it, we did not do it, and the Confederation took place with a clause in the British North America Act which reads as follows. It is the third subsection of the ninety-third clause :

Where in any province a system of separate or dissentient schools exists by law at the Union,—

Which was the case in Ontario and Quebec,

—or is thereafter established by the Legislature of the province,—

That was to apply to the three provinces that were federated with Ontario and Quebec.

—an appeal shall lie to the Governor-General in Council from any act or decision—

And so on. So that, Mr. Speaker, by this section we provided not only for the two provinces of Ontario and Quebec, which kept their separate schools as they had established them previous to Confederation, but also for the three provinces should they wish to have a system of separate schools afterwards. Should they decide to establish a system of separate schools, those separate schools were to be in the same position as similar schools in Ontario and Quebec, and the system could not be changed or altered except at the will of the people interested in such schools. Therefore, Mr. Speaker, when the hon. gentleman says this, he may not know what I stated about the conference at London, but what I state is exactly the fact. Now, the hon. gentleman in all his argument has stated, or it was understood, that our object is to impose separate schools upon Manitoba. I, for one, have no such intention, and I do not think others have. If the province has established separate schools, or if the province had, by law or practice, separate schools previous to the Act of 1870, the Manitoba Act, then the separate schools should be maintained and should exist, as it was the free will of the people that they should be there. But, Mr. Speaker, the hon. gentleman considers that in that province there is only one section of the people who have rights—the majority, the Protestant majority, who are opposed to separate schools—and that we who favour separate schools should not be considered by this House or by the Government. The Act of 1870, the Manitoba Act, provides specially for a case of this kind. It says :

In and for the province, the said Legislature may exclusively make laws in relation to education, subject and according to the following provisions.—

The three sections which follow have been read several times and I do not intend to read them more than is necessary for my argument. It should be noted that it is clearly provided that—

Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law or practice in the province at the Union.

The hon. gentleman says there was no law, therefore the words "by law" should not apply, and that they are mere surplusage. But he says the question of practice is another thing and that it has been decided against finally by the Privy Council in England. Therefore he goes on and speaks of the appeal under the next subsection and says that evidently these things are there as a dead letter. He did not use those words, but that is the meaning of his argument; therefore, the laws passed in 1871, 1873 and 1875 are not to be considered. The hon. gentleman says that the reference in the law of 1870 to rights under the law must refer to laws passed previous to that Act. And he goes further and says (I think I took down his words) "until November last it never occurred to any one that subsection 3 of section 93 of the British North America Act could apply to Manitoba." Under the British North America Act there were the four provinces of Ontario, Quebec, Nova Scotia and New Brunswick, Prince Edward Island coming in afterwards. The hon. gentleman might, perhaps, have quoted, when speaking of the Manitoba Act, the second section of that Act, which says:

On, from and after the said day on which the order of the Queen in Council shall take effect as aforesaid, the provisions of the British North America Act, 1867, shall, except those parts thereof which are in terms made, or by reasonable intendment, may be held to be specially applicable to or only to affect one or more, but not the whole of the provinces now composing the Dominion, and except so far as the same may be varied by this Act, be applicable to the province of Manitoba, in the same way, and to the like extent as they apply to the several provinces of Canada, and as if the province of Manitoba had been one of the provinces originally united by the said Act.

Well, this is certainly a strong reason, which I have no doubt, convinced the sub-committee of the Privy Council when they sent their report to the Council, which was adopted on the 29th December, 1892, and in which they say that among the questions which the sub-committee regarded as preliminary was the following:—

Whether subsection 3 of section 93 of the British North America Act applies to Manitoba.

Well, that clause certainly is a strong reason why the Ministers who had this matter under their consideration, should have taken this into their consideration at that time, and should have made the report they did, that is to say, that they desired to know whether that third subsection of the 93rd section of the British North America Act applies to Manitoba. The hon. gentleman who preceded me has given strength to that opinion, when he said just now, after discussing the two first subsections of the 22nd section of the Manitoba Act: Oh, well that is the same as blank paper, it is useless, it is of no effect. Well, if it is of no effect, it does not apply even to the law or practice that existed in the province at the time of the Union; and then "a fortiori" the third section of the 93rd section of the British North America Act should apply when we read the second section of the Manitoba Act, which says:

On, from and after the said day on which the order of the Queen in Council——

That is to say, to put the Act in force——

—shall take effect as aforesaid, the provisions of the British North America Act, 1867, shall, except those parts thereof which are in terms made, or by reasonable intendment, may be held to be specially applicable to or only to affect one or more, but not the whole of the provinces now composing the Dominion, and except so far as the same may be varied by this Act, be applicable to the province of Manitoba.

Well, that cannot be varied by the Manitoba Act, when the hon. gentleman says himself that it is of no effect; therefore, in the Manitoba Act this question of schools was not provided for as intended by the British North America Act, and this second section of the Manitoba Act itself. But, Mr. Speaker, the Act of 1870 was passed and accepted by the people, and afterwards the Legislature passed three other Acts in 1871, 1873 and 1875. The first Act was "An Act to Establish a System of Education in the Province of Manitoba," and was passed on the 3rd May, 1871. That Act constituted a Board of Education, under which they appointed a superintendent and secretary, and the Act regulated the meetings of the board, the quorum, the calling of the meetings, the chairman, duties of the board, appointment of the superintendent, &c. The Lieutenant-Governor in Council may appoint not less than ten or more than fourteen persons to be a Board of Education, of whom one-half shall be Protestants and the other half Catholics.

The Lieutenant-Governor in Council may appoint one of the Protestant members of the board to be superintendent of Protestant schools, and one of the Catholic members to be superintendent of Catholic schools, and the two superintendents shall be joint secretaries of the board.

Well, later on, in 1873, on the 8th March, they amended the Act to establish a system of education in that province. It is provided under these amendments that the duty of the board of education shall be to alter and subdivide, with the sanction of the Lieutenant-Governor in Council, any school district established by this Act. It is the duty of each section of the board to have under its control and management the schools of

the section, the examination or licensing of teachers, the selection of books, maps and globes :

Provided always, that in the case of books having reference to religion and morals, such selection by the Catholic section of the board shall be subject to the approval of the competent religious authorities.

Well, two years afterwards, on the 14th May, 1875, the Act was amended again, and the hon. gentleman will see how that was done :

Within six months after the passing of this Act the Lieutenant-Governor in Council shall appoint, to form and constitute the Board of Education for the province of Manitoba, not exceeding twenty-one persons, twelve of whom shall be Protestants and nine Roman Catholics, who shall hold office for three years, being, however, eligible for reappointment, or if a lesser number be appointed, the same relative proportion of Protestants and Catholics shall be observed, and until such appointment shall take place, the members of the present Board of Education shall continue in office, and any vacancy occurring in such council from any cause, shall from time to time be filled by the Lieutenant-Governor in Council.

The council was to be composed of two committees, one Protestant and one Roman Catholic. Then the Legislative appropriation was to be divided between them :

The number of such children in the Protestant and Catholic districts respectively being aggregated as regard each of said faiths.

Well, Mr. Speaker, that system of education was in force in 1871, modified in 1873, and completed in 1875. That was after the Manitoba Act had been passed, and this legislation was enacted under that Act. In 1883 Parliament passed what is called the Dominion Lands Act. Section 23 of the Revised Statutes is as follows :—

Sections 11 and 29 in every surveyed township throughout the extent of the Dominion lands are hereby set apart as an endowment for purposes of education, and shall be designated school lands; and they are hereby withdrawn from the operation of the clauses of this Act, which relate to the sale of Dominion lands and to homestead rights therein; and no right to purchase or to obtain homestead entry shall be recognized in connection with the said sections, or any part of them.

Section 24 is as follows :—

The schools lands shall be administered under the direction of the Governor in Council.

Subsection 3 of section 25 says :

All moneys from time to time realized from the sale of school lands shall be invested in securities of Canada, to form a school fund, and the interest arising therefrom, after deducting the cost of management, shall be paid annually to the Government of the province or territory within which such lands are situated, towards the support of public schools therein; and moneys so paid shall be distributed for that purpose by the Government of such province or territory in such manner as it deems expedient.

The Government which proposed that law was the Government of Sir John A. Macdonald, of which I was a member. At that time, 1883, the three Acts I have mentioned as giving the system of separate schools to Manitoba were in force and were the laws of that province. We had there separate schools, and the common schools or Protestant schools, were there established by law. We gave those lands, not for the benefit of one set of schools, but for the schools of the whole province. What happened under these two Acts of 1890 ? Was it that the separate schools were to have no interest in those lands? The interest received from those lands was not to go to the separate schools, nor was it to go to the common schools alone. That was not the intention of the Government or Parliament. I know that the Government would never have committed an injury on a large portion of the population of Manitoba by handing over the lands to only one section of the community. The reason why we did not give the capital to the province, but only the interest, was because we feared that the people would expend that capital when the province possessed a small population, and when the wants of the larger population in later days were felt, the money would have been expended that should have gone to support the schools of the province. And, therefore, we kept the capital, and gave the interest for school purposes. But let it be remembered that the interest was not to be given only to one section, but was to be devoted for the purposes of all the schools, the separate schools as well as the common schools. The hon. gentleman stated that the Government has said they were judges, and therefore that it was a judicial decision they were to give. I do not know what is the meaning of that word in the mouth of some Ministers when stated verbally or in writing ; but I know that it was a regular practice with members of Sir John Macdonald's Government, when a question was put to them on any subject as to the decision of the Council respecting it, to say that they could not speak of it as they were judges and were bound under their oath to be silent. The word judge is not limited to a judge on the bench; but in the case of the Government, were men who were judges in all matters that came before us. No doubt that is the intention of hon. gentlemen opposite. During the twenty-five years I was a Minister of the Crown that was the manner we answered questions of that kind, not only in regard to the school question, but in regard to other important questions. The hon. gentleman says that the Ministers are acting as judges, and they are required to give a judicial decision. Why? Because by the Order in Council, 29th December, 1892, they had decided to refer a number of legal questions to the judges of the Supreme Court. The hon. gentleman admits that members of the Government may and should consult the Minister of Justice, and he has asked several questions in regard to the law in this regard. I believe that the advice of the Minister of Justice—I speak generally and not of this Minister of Justice only—would not be so satisfactory to a

province such as Manitoba, as would be an opinion given by the judges of the Supreme Court. That was no reason for saying that because those judges were to be consulted, the decision should be in one or other direction. When the opinion is received by the Minister of Justice, the political action on the part of the Government begins, and it is for them then to decide whether the complaint made by the minority has any substantial foundation and whether remedial measures should be applied or not. If it should be decided that subsection 3 of section 93 of the British North America Act applies to Manitoba, it gave another complexion to the case. It presented the case in a different way, and the Government would be called upon to decide whether the system of education that has been given and accepted by Manitoba, by its own Legislature in 1871, 1873 and 1875, is such a system of education as is provided for by the third subsection of section 93 of the British North America Act. I do not intend to detain the House longer, because I am aware that several hon. gentlemen intend to speak on this question, and I do not wish to follow the hon. gentleman all through his very able speech. I trust the House will afford me a few minutes to enable me to point out the singularity in comparing this resolution of the hon. member from L'Islet (Mr. Tarte), with the end of an article entitled "The Manitoba Public School Law, by Dalton McCarthy, Q.C., M.P.," who, I suppose, is the hon. gentleman opposite.

Mr. McCARTHY. I suppose so.

Sir HECTOR LANGEVIN. Comparing the resolution, as I said, with the end of that article published in the "Canadian Magazine," we find that the article states as follows :—

> Manitoba has had but scant courtesy and but little consideration at the hands of the Government of Canada. Her railway legislation was vetoed so persistently that her people were driven to the verge of rebellion.

The hon. gentleman stated that in his address this afternoon.

> These acts, if unwise and harsh, were at least within the lines of the Constitution. But the attacks now launched against her exclusive right to manage her educational system is fraught with perilous consequences to the Dominion; and for the initial steps that the Government at Ottawa have taken to accomplish that end it should be held to strict account, or Parliament will lamentably fail in its duty; and the pretence that the Cabinet acts as a judicial tribunal and not as political advisers of the Crown should meet with the contempt and condemnation it invites at the hands of the representatives of the people.

Now let me read the resolution of the hon. member (Mr. Tarte), and we will find a somewhat wonderful similarity between it and the extract from this article, written by the hon. member for Simcoe (Mr. McCarthy) :

> This House desires to express its disapproval of the action of the Government in dealing with the Manitoba school question, and in assuming to be possessed of the judicial functions conflicting with their duty as constitutional advisers of the Crown, which assumption is wholly unknown to the law, and, if now acquiesced in, would be entirely subversive of the principle of ministerial responsibility.

The resolution is not only the same idea as the concluding words of the article, but it is couched in nearly the same terms, and it appears to me that the motion would have been a great deal better in the hands of the hon. gentleman (Mr. McCarthy) than in the hands of the hon. member for L'Islet (Mr. Tarte). One would think that before making their speeches, and before this question came up, they had put their heads together, and that one hon. member said to the other : Well, if you take my motion I will support it, and you can make your speech. I do not say that such was done ; but it looks a little like it. At all events, the resolution would have been a great deal better in the hands of the hon. member for Simcoe (Mr. McCarthy), who has supported it in such a strong speech. It is remarkable how the two hon. gentlemen have arranged to make both ends meet. The one is for separate schools, and condemns the Government very strongly because they have not vetoed the Bill as he thinks they should do, while the hon. gentleman opposite (Mr. McCarthy) is strongly against separate schools ; but he finds reasons for condemning the Government and supporting the latter part of the resolution of the hon. member for L'Islet (Mr. Tarte). That is somewhat strange. I suppose that the first part of the resolution was intended for the hon. gentleman for L'Islet (Mr. Tarte), and the last portion intended for the hon. member for Simcoe (Mr. McCarthy). I thank the House for hearing me, and I will resume my seat to allow the question to be discussed by other hon. gentlemen.

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